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March 18, 1996

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
Washington, D.C. 20554

**Re: Revision of Part 22 and Part 90 of the Commission's  
rules to Facilitate Future Development of Paging  
Systems  
WT Docket No. 96-18**

**Implementation of Section 309(j) of the  
Communications Act -- Competitive Bidding  
PP Docket No. 93-253**

Dear Mr. Caton:

Transmitted herewith on behalf of PagePrompt U.S.A.  
("PagePrompt") are the paper original, three microfiche, and  
four paper copies of its "Comments on Notice of Proposed  
Rulemaking" in the above-referenced proceeding.

This material is respectfully directed to the attention of  
the Commission.

Please direct any questions or correspondence with respect  
to this matter to our office.

Very truly yours,

Ellen S. Mandell  
Attorney for PagePrompt U.S.A.

Enclosure

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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OFFICE OF SECRETARY

In the Matter of	)	
	)	
Revision of Part 22 and	)	WT Docket No. 96-18
Part 90 of the Commission's	)	
Rules to Facilitate Future	)	
Development of Paging Systems	)	
	)	
Implementation of Section	)	PP Docket No. 93-253
309(j) of the Communications	)	
Act -- Competitive Bidding	)	

To: The Commission

COMMENTS ON NOTICE OF PROPOSED RULEMAKING

PagePrompt U.S.A. ("PagePrompt"), by its attorney and pursuant to Section 1.415(a) of the Commission's Rules, hereby submits its comments in the above-captioned proceeding to amend the paging rules. In support hereof, PagePrompt respectfully states as follows:

By its Notice of Proposed Rulemaking ("NPRM"), FCC 96-52, released February 9, 1996, the Commission has proposed sweeping revisions to the rules governing the licensing of paging facilities. PagePrompt is the licensee of a wide-area paging system in the 931 MHz band, serving California and other western states. Under the circumstances, PagePrompt is an "interested" person for purposes of participating in this proceeding.

The Commission has proposed to replace its current site-by-site licensing procedures for paging systems with a market-wide licensing scheme, and to adopt competitive bidding procedures to resolve mutual exclusivity between applications. The Commission has acknowledged that in the 931 MHz band, incumbents are already providing service in most areas, and that vacant channels are

"scarce" in virtually all major markets and most mid-sized markets." (NPRM, ¶13). Thus, the Commission has proposed to allow the incumbents either (1) to continue operating under existing authorizations or (2) to trade in their site-specific licenses for a single system-wide license, demarcated by the aggregate of the service contours around each of the incumbent's contiguous sites operating on the same channel (NPRM, ¶37). However, in areas where the incumbent licensee is not also the "geographic licensee," the incumbent would not be permitted to expand beyond its present interfering contours without the consent of the geographic licensee (NPRM, ¶37).

PagePrompt respectfully submits that if market-wide licensing is adopted, it would be contrary to the public interest to lock incumbent licensees who are not also "geographic licensees" within their present interfering contours. In order to properly serve the public, paging carriers must be able to add to or modify their systems in response to constantly changing needs of customers. For example, existing customers often require a carrier to expand service due to the addition or relocation of shops, plants, offices, or other business changes. PagePrompt's California system has particularly experienced major population shifts in recent years. These changes are not within the whim or control of the licensee, but rather, are necessary to provide the required level of service to the public.

Carriers are also confronted with a myriad of other circumstances beyond their control which require addition or relocation

of transmitting facilities. New sites are often required where there is an unanticipated coverage shortfall, or where new building construction impairs previously acceptable service. Sites often must be relocated due to loss of lease, or condemnation proceedings, or acts of God. PagePrompt's California system has experienced such natural disasters as earthquakes, flooding, fires and mud slides. Due to such constraints as zoning restrictions, terrain conditions, FAA regulations, and environmental considerations, it is not always possible to locate a new site that will not expand the system's interfering contour yet continue to serve perimeter areas. If carriers are unable to respond to such circumstances due to a permanently frozen footprint, it can be expected that existing service to the public ultimately will be degraded.

Furthermore, left-over areas of 931 MHz spectrum in markets already substantially served by incumbents probably have no commercial value to new entrants. It is likely that the tiny areas remaining are presently unserved due to lack of demand for service at this time. Moreover, the Commission has recognized the marketplace's preference for wide-area systems, as opposed to stand-alone paging systems with tiny coverage areas (NPRM, ¶21). These remaining areas can be efficiently operated as, and in the future will likely be essential to, expansions of existing systems.

To open such areas to competitive bidding will invite anti-competitive mischief. In-market competitors on other frequencies

might attempt to artificially bid-up the price of spectrum in these areas in order to weaken the competitive position of the incumbent by sapping its financial resources. Indeed, as a mere cost of doing business, a deep-pocketed competitor might bid high to acquire the spectrum, to entirely block the incumbent from geographic expansion required for competitive viability. Even if a mandatory implementation schedule is adopted, an unscrupulous competitor could acquire the spectrum at auction to block an incumbent from needed expansion for years, until expiration of the "geographic" authorization for failure to construct.

It would be naive to believe that "geographic licensees and incumbents could enter into voluntary negotiations with respect to the purchase or relocation of the incumbents' facilities" or that "incumbents would be free to negotiate voluntary arrangements with geographic licensees to allow incumbent expansion within a geographic area" (NPRM, ¶39) in a manner which would serve the public interest. Speculators and greenmailers having no interest in providing paging service on spectrum acquired at auction will have free reign to demand a king's ransom for spectrum each time the incumbent must expand geographically to respond to a subscriber's needs.

The Commission has recognized that paging is a mature, thriving industry (See e.g. NPRM, ¶¶ 6-7; Separate Statement of Commissioner Susan Ness; Separate Statement of Commissioner Rachelle B. Chong). Incumbent paging carriers presently serve the needs of the public by providing urgent communications at

reasonable rates in a spectrally-efficient wide-area manner. While rule changes that would afford paging providers opportunities to improve service offerings are welcome, it is vitally important to the public interest, convenience and necessity that the Commission take no action which would hinder the ability of incumbent licensees to continue providing reliable, responsive service.

WHEREFORE, the premises considered, PagePrompt U.S.A. respectfully submits that the Commission should adopt rules in accordance with the foregoing.

Respectfully submitted,

**PAGEPROMPT U.S.A.**

By Ellen S. Mandell  
Its Attorney

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